IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.2632 of 2006
Date of Decision : November 02, 2006.

Smt.Suresh Kumari ..... Appellant

Vs.

Haryana State and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.B.R.Vohra, Advocate
for the appellant.

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P.S.Patwalia, J. (Oral) :

The present Regular Second Appeal has been filed by the plaintiff against concurrent findings recorded by the courts below dismissing the suit filed by the plaintiff.

The facts as emerged from the pleadings are that as a result of her transfer from Gurgaon to Chandigarh the plaintiff joined duty on 29.08.1991. Thereafter she took casual leave for one day on 6.9.1991 and since 7th and 8th of September, 1991 were gazetted holidays, she was supposed to resume her duty on 9.9.1991. However she did not resume her duty and remained absent. She was charge-sheeted on 23.12.1991. The

proceedings after the issuance of the charge-sheet and during the course of the inquiry leading to the order of termination on 28.1.1994 have been culled out by the trial court. The relevant portion is as hereunder :-

> *"Plaintiff has challenged the findings given by Enquiry Officer, termination order, dismissal of appeal by defendant no.1 and rejection of appeal by defendant no.2 on the plea that she was not given opportunity of personal hearing but I find that no cogent and reliable evidence has been led by the defendants to falsify the plea of the plaintiff. Plaintiff has been charge sheeted u/rule 7 of Haryana Civil Services (P&A) Rules, 1987 by defendant no.3 vide memo dated 23.12.91 Ex.D2. This memo has been sent to home of plaintiff at address H.No.541 Ward No.8 Bhim Nagar, Gurgaon, by registered post. Reply has been given by the plaintiff on 4.2.92 which is Ex.D3. In this reply, plaintiff has simply pleaded that all of a sudden she was not feeling well and therefore, cannot resume her duty. Defendant no.3 has thereafter appointed Enquiry Officer to conduct a departmental inquiry against plaintiff vide order Ex.D4. Summons by Enquiry Officer was ordered to be issued to plaintiff under registered cover as become clear from summons Ex.D5 and Ex.D6. On the back of Ex.D6, it has been reported by*

postman that given address of plaintiff was visited by postman at least four times. Enquiry Officer tried his level best to procure presence of plaintiff, but was unable to do so and he had been constrained to start exparte proceedings. Findings Ex.D7 given by Enquiry Officer do not suffer from any illegality on the ground that no opportunity of hearing was given to the plaintiff. Rather, from Ex.D5 and Ex.D6 it is clear that efforts had been made to secure the presence of the plaintiff by Enquiry Officer. Defendant no.3 issued show cause notice on termination of service vide order dated 8.12.93 Ex.D8 which was also sent to plaintiff at her home address through registered post. Registered cover has been received back with the report of refusal by the office of defendant no.3. Ex.D9 is the report made on the registered cover by the post man. Before report of refusal was made, postman had visited the home address on 15/12 to 18/12, 20/12, 21/12 and 22/12/93 refusal was reported. Defendant no.3 thereafter tried to get served show cause notice on termination upon plaintiff by way of publication in the daily newspaper `Dainik Mewat' on 14.1.94. Ex.D10 is the publication and Ex.D11 is the order by defendant no.3 to get served

plaintiff with show cause notice through publication. When defendant no.3 was not able to get plaintiff to file reply to the show cause notice, he terminated the services vide order Ex.D12 dated 28.1.94. A bare glance at this order leaves no manner of doubt that it has been passed by defendant no.3 after applying his own mind and not in a casual manner as was implied, by the plaintiff."

A reading of the aforementioned findings would show that after filing a bald reply on 4.2.1992 to the charge-sheet, she did not appear before the Inquiry Officer in spite of repeated efforts made to secure her presence including publishing of a notice in the newspaper. Against the order of dismissal she filed an appeal. Though the appeal remained pending she did not take any steps to get the appeal decided. It is only in the year 2002 that she filed Civil Writ Petition No.19122 of 2002 in this Court praying for a direction to defendant no.1 to decide the appeal. While deciding the appeal, defendant no.1 gave personal hearing to the appellant. She stated before defendant no.1 that she had Gynaecological problem. However her medical certificate showed that the problem related to Hapatic, Amoebisis, Lumbago cum FI Dysooepsis and Rheumatic Pain. The Appellate Authority therefore found that the plea of illness was false. Even apart from this on the issue of her illness the Lower Appellate Court has also recorded that she could not disclose the nature of the disease she was suffering from. The observations of the Lower Appellate Court in this regard are as hereunder :-

"In support of her averments, plaintiff has

> *examined only herself as PW1. Although, by way of examination-in-chief, she has narrated the plea as taken in the plaint, but when she was subjected to cross examination by Ld. Govt. Pleader it bears out that plaintiff has only again and again emphasized that she had sent telegram for extension of leave. She deposed that due to illness she could not resume her duty and that she had produced private medical certificate, but neither in plaint nor when plaintiff appeared in the witness box she disclose the nature of the disease from which she was suffering at the relevant time and which rendered her unable to join duties."*

Still further the Lower Appellate Court has recorded that neither in the pleadings nor in her oral testimony she could substantiate her plea that she wanted to join but her request was turned down. The relevant observations are as hereunder :-

> *"During this long period of approximately 12 years, whether plaintiff ever made request to defendant no.3 to allow to resume duty. Whether plaintiff approached defendant requesting to allow her to come on duty and whether her request was turned down are the questions which remain unanswered till date. Neither in the pleadings nor in the oral testimony of plaintiff, I was able to read plea of plaintiff that she had tried to join her duty,*

> *but her request was turned down. It is not the case of plaintiff nor pleaded anywhere that her disease was such which left her incapable of joining the duty for such a long period of 12 years. When plaintiff was given opportunity to lead evidence in this regard, even then plaintiff has not been able to bring on record any medical to show that her disease was of such nature that she was not in a position to resume her duty on 9.9.91 or thereafter."*

It is on the basis of the aforesaid that the trial court has dismissed the suit of the plaintiff and upheld the action of the State in dismissing her services. These findings were even affirmed by the Lower Appellate Court.

I find no reason to interfere in the aforementioned findings recorded by the courts below. No substantial question of law arises for determination in this Regular Second Appeal and the same is accordingly dismissed in limine.

November 02, 2006 (P.S.Patwalia)
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